



**Housing Finance Company Limited v Hadar Limited (Miscellaneous Application Arbitration E069 of 2023) [2025] KEHC 11008 (KLR) (Commercial and Tax) (25 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11008 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION ARBITRATION E069 OF 2023**

**FG MUGAMBI, J  
JULY 25, 2025**

**BETWEEN**

**HOUSING FINANCE COMPANY LIMITED ..... APPLICANT**

**AND**

**HADAR LIMITED ..... RESPONDENT**

**RULING**

1. For determination is the application dated 8<sup>th</sup> May 2025, brought under Sections 1A, 1B, and 3A of the *Civil Procedure Act*, Article 50 and 159 of *the Constitution* of Kenya and Order 51 Rule 1 of the Civil Procedure Rules.
2. The application seeks leave for the applicant to file a further affidavit to adduce a forensic document examination report prepared by Dignity Forensic Document Examiners, dated 15<sup>th</sup> April 2025, within two working days or within such time as the court may deem just and expedient.
3. The application is supported by the grounds set out on the face of the application and in the supporting affidavits of Cecilia Kabugi and Daniel M. Gutu. It is the applicant's position that the forensic report reveals that the signatures on the arbitral award and related documents were not authentic and were not executed by the arbitrator, Mr. Walter Aggrey Odundo.
4. The applicant contends that the report directly challenges the validity of the arbitral award and should therefore be interrogated to aid in the just determination of the matter. It submits that the court, in exercising its discretion and in the interest of justice, should allow the production of this critical piece of evidence which is compelling and undermines the credibility and enforceability of the arbitral award. It was also submitted that the nature of the discovery was such that it could not have been reasonably made earlier, even with due diligence.



5. The respondent has opposed the application through grounds of opposition dated 18<sup>th</sup> June 2025, and written submissions. The respondent argues that the application constitutes an attack on a decision already rendered by the court and is characterized by unexplained delay. The respondent further states that the application offends the principles of finality in litigation and undermines the substantive nature of the proceedings.
6. The application takes the application to be an afterthought and an abuse of court process, as it seeks to introduce evidence that could have been presented earlier in related proceedings. The respondent further argued that the matter concerning the arbitral award had already been determined in Arb No. E040 of 2023, and the application amounts to an indirect appeal or challenge to that decision. It was also submitted that the arbitrator himself would be a necessary party to this application in order to verify the questioned signature.

### **Analysis and Determination**

7. I have considered the pleadings, the evidence presented and the submissions on record. The main issue for determination is whether the applicant should be granted leave to file a further affidavit in order to adduce a forensic document examination report, which was obtained after the initial pleadings and proceedings.
8. The legal framework governing judicial intervention in arbitral proceedings is rooted in the [Arbitration Act](#), which affirms the principles of party autonomy, minimal court interference, and the finality of arbitral awards. Section 32A of the Act encapsulates this core principle by providing that:

“Except as otherwise agreed by the parties, an arbitral award shall be final and binding upon the parties to the arbitration.”
9. This provision underscores the central philosophy of arbitration as a private and binding dispute resolution mechanism chosen by the parties. It affirms that, once an award is issued, the parties, having voluntarily submitted to arbitration, are generally bound by the outcome. Aligned with this philosophy, Section 10 of the Act imposes a strict limitation on the jurisdiction of courts in arbitral matters. It provides that:

“Except as provided in this Act, no court shall intervene in matters governed by this Act.”
10. The intent of this provision is to protect the autonomy and integrity of the arbitral process from judicial interference and to prevent parties from using the courts to circumvent the consequences of an unfavorable award. The role of the courts is, therefore, supportive rather than supervisory, intended to give effect to arbitration agreements and facilitate the enforcement of awards, not to act as an appellate forum.
11. In the context of the present proceedings, it is noteworthy that the applicant previously challenged the arbitral award by way of an application under Section 35 of the [Arbitration Act](#). That application was dismissed. Section 35 permits a party to apply for the setting aside of an arbitral award on grounds enumerated under Section 37, including that the award was induced or affected by fraud.
12. The applicant did not invoke fraud or any other related ground under Section 37 in its challenge. The dismissal of an application under Section 35 clears the way for recognition of an award, rendering it binding and final for all practical purposes.
13. In view of the above, allowing the applicant to adduce new evidence at this stage would undermine the principle of finality of arbitral awards, particularly since the application to set aside the award under



Section 35 was already dismissed. The attempt to now impugn the award on the basis of evidence that could and ought to have been presented earlier amounts to an afterthought and is inconsistent with the principle of finality in arbitral proceedings.

14. The *Arbitration Act* does not contemplate a second opportunity to re-litigate or reopen issues that could and should have been addressed at the setting aside stage under Section 35. In my view, the dismissal of the applicant's Section 35 application effectively forecloses any further challenge to the arbitral award on grounds that were available at that time. The applicant's current attempt to introduce a forensic document examination report under Section 36 is not only procedurally inappropriate but also lacks merit.
15. Throughout the arbitral proceedings, and even during the Section 35 application, the applicant consistently acknowledged its participation in the arbitration before the sole arbitrator. At no point did it raise any allegations of forgery or request for expert examination of the documents. The belated claim that the forgery could not be detected by an untrained eye does not justify the submission of the forensic report nearly six months after the dismissal of the setting aside application.
16. Moreover, the applicant has failed to provide any plausible explanation as to why the forensic report could not have been obtained earlier, particularly given that the arbitral award was published on 17<sup>th</sup> October 2022. The introduction of the report nearly three years after the award was rendered constitutes an inordinate and unexplained delay which further undermines the credibility and timeliness of the applicant's current application.
17. Allowing the introduction of such evidence at this stage would occasion prejudice to the respondent and also defeat the very objective of arbitration as a time-bound, cost-effective, and efficient mechanism for resolving disputes.
18. Although the applicant seeks to invoke Article 159 of *the Constitution*, which also requires courts to promote alternative dispute resolution mechanisms, including arbitration, that provision cannot be read in isolation. Article 159 must be applied in a manner that enhances, rather than diminishes, the efficacy and finality of arbitral proceedings. To exercise discretion in favour of the applicant in these circumstances would run contrary to the spirit and intent of Article 159 and the *Arbitration Act*. I am therefore not persuaded that this is a proper case for the court to intervene in favour of the applicant.

### **Disposition**

19. Accordingly, I find that the application dated 8<sup>th</sup> May 2025 is not meritorious and the same is dismissed with costs. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI**

**THIS 25<sup>TH</sup> DAY OF JULY 2025.**

**F. MUGAMBI**

**JUDGE**

